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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1967

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No. _____

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DR. CARLOS MANUEL FALLA Y ALVAREZ,
Petitioner,

vs.

PAN-AMERICAN LIFE INSURANCE COMPANY,
Respondent.

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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Dr. Carlos Manuel Falla y Alvarez respectfully prays that a writ of certiorari issue to review judgment of the United States Court of Appeals, Fifth Circuit, entered on March 9, 1967, with the timely petition for rehearing denied April 4, 1967, which did reverse a judgment entered on September 4, 1964 in the United States District Court for the Southern District of Florida, Miami Division, in favor of Dr. Alvarez, Petitioner herein.

## OPINIONS BELOW

The opinion of the United States District Court for the Southern District of Florida is not reported.

The opinion of the United States Court of Appeals, Fifth Circuit, is reported in 374 F. 2d 92.

## JURISDICTION

The jurisdiction of this Court is invoked pursuant to U. S. C. A., Title 28, Section 1254, (1), and Rule 19 (b).

## QUESTIONS PRESENTED FOR REVIEW

Two questions are presented by this record. They are:

1. An insured owned life insurance policies which provided that the policy and application therefor constitute the entire contract which cannot be changed or modified except by written consent of the company over the signature of the president, vice-president, secretary or actuary; nor could the company be bound by any promise or representation affecting this contract by anyone other than the above-mentioned officers of the company. The insurance co pany issued certain alleged monetary agreements thereafter which were called "convenio monetario." The "convenio monetario" was not signed by any of the above-mentioned officers of the company, and purported to change the terms of the policies from policies payable in United States dollars to policies payable in national currency of Cuba. Does the "convenio monetario" bind the insured thereby, amending the original policies?

2. At the trial of this cause of action before the United States District Court, the insured testified as to the cash value of each of the policies involved. The in-

surance company presented no evidence concerning cash value of the said policies, nor did counsel for the company cross-examine the insured as to his determination of the cash value of said policies. The trial Court adjudicated the cash value of the policies in favor of the insured. There was no finding by the District Court that judgment was entered requiring the insurance company to pay an American dollar for each peso owed in Cuba. The United States Court of Appeals, Fifth Circuit, reversed the District Court's judgment and held that judgment had been entered in favor of the insured, in the Court below, requiring the company to pay an American dollar for a Cuban peso. Should the Court of Appeals disturb or interfere with the judgment of the trial Court when the trial Court's decision is supported by competent evidence?

## STATEMENT OF THE CASE

The insured brought suit against the defendant insurance company to recover the cash surrender values of six life insurance policies. Applications for the policies were made in Cuba and they were accepted and issued by the company at its home office in New Orleans, Louisiana. The insurance policies involved are as follows:

(a) Policy 254-900 was issued February 23, 1934. The initial premiums were paid in dollars. The cash surrender value is $995.00 payable at New Orleans, Louisiana.

(b) Policy 324-766 was issued April 14, 1939. The initial premiums were paid in dollars. The cash value

of this policy is $3,114.00, payable at New Orleans, Louisiana.

(c) Policy 387-428 was issued March 16, 1944. The initial premiums were paid in dollars. The cash surrender value is $14,346.00, payable at New Orleans, Louisiana.

(d) Policy 414-798 was issued April 25, 1946. The initial premiums were paid in dollars. The cash surrender value is $619.00, payable at New Orleans, Louisiana.

(e) Policy 441-506 was issued August 4, 1947. The initial premiums were paid in dollars. The cash surrender value is $8,500.00, payable at Havana, Cuba.

(f) Policy 636-489 was issued March 19, 1959. The initial premiums were paid in Cuban pesos. The cash surrender value is $7,347.00, payable at Havana, Cuba.

The insurance policies contained no restrictions as to residence, travel or employment. The policies do, however, contain a provision that,

> "This policy and the application therefor, a copy of which is attached hereto and made a part hereof, constitute the entire contract, which cannot be changed or modified except by the written consent of the company over the signature of the president, vice-president, secretary or actuary; nor shall the company be bound by any promise or representation affecting this contract made at any time by any person other than the above mentioned officers of the company, nor shall any condition be waived nor the

time of payment of a premium be extended, except by the written consent of the company, over the signature of one of the said officers." (R. 213).

At the trial of this cause, the Plaintiff insured testified as to the cash values of each of the policies involved. (R. 214).

In 1952, the Defendant company sent to the insured certain papers called "convenio monetario." These papers purported to amend the policies as follows:

"In consideration of the Pan-American Life Insurance Company accepting payments of the premiums on the above numbered policy in Cuban Currency in Cuba, in lieu of the payment of United States Dollars in New Orleans, Louisiana, it is requested that my policy be amended so that all premiums, all benefits and all claims payable under its terms be demandable and payable in the National currency of Cuba in Havana, Cuba **on the basis of one Peso for each Dollar,** required by the contract, and it is agreed that upon receipt of this request by the Pan-American Life Insurance Company, it shall become a part of the contract subscribed by the undersigned and the Company."

The required officers, as provided under the terms of the policy, did not sign the "convenio monetario" papers, nor did any company officer sign the said papers. The trial Court, the United States District Court, refused to apply the "convenio monetario" papers to alter the

policies involved as to place of payments or currency, rendering its judgment in favor of the Petitioner-Plaintiff. The Court of Appeals reversed, holding that the said "convenio monetario" was a valid agreement.

## REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT AND BRIEF ARGUMENT IN SUPPORT THEREOF

1. The Court of Appeals has rendered its decision in this case in direct conflict with the decision of the Florida Supreme Court in **Gulf Life Insurance Co. vs. Conklin,** 16 So. 2d 337, which is still the law of Florida. This case concerns itself with question one of the insured's Petition for Writ of Certiorari. The question is an important one, as this decision will affect those many policy holders similarly situated.

2. The Court of Appeals has departed from the accepted and usual course of judicial appellate law as to call for an exercise of this Court's power of supervision. In the above-styled case, the trial court determined the cash surrender values of each of the policies involved, relying on the uncontradicted testimony of the insured. The Court of Appeals reversed, holding that the alleged "convenio monetario" was a valid agreement which amended the original policies from dollar policies to Cuban peso policies.

The effect of this decision of the Court of Appeals is to disregard competent evidence relied on by the trial Court for its decision, and to substitute its judgment for that of the trial Court. The decision conflicts with basic, accepted principles of Appellate law. See **In Re Baldridge's**

**Estate**, 74 So. 2d 658; **Bergh v. Bergh** (1964 Fla.) 160 So. 2d 145; **Bittner v. Walsh**, (1961 Fla. App.) 132 So. 2d 799; **Allyn v. Abad** (C.C.A.N.J. 1948) 167 Fed. 2d 901; **Moore v. United States** (C.C.A.Pa. 1963) 322 Fed. 2d 372.

## CONCLUSIONS

The "convenio monetario" papers, translated and referred to as monetary agreements, were not executed by the insurance company as appears on its face and therefore could not alter the policy terms especially as to currency or place of payment. The Court of Appeals decision directly conflicts with the **Gulf Life Insurance Co. v. Conklin**, 16 So. 2d 337 decision of the Florida Supreme Court.

The Court of Appeals also disregarded the competent evidence relied on by the trial Court as a basis for its decision and substituted its own findings for those of the District Court.

It is, therefore, submitted that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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